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07/411576

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/411,576	09/22/89	MAGLICA	A 188167

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B9M1/1112

EXAMINER	
TUNG, M	
ART UNIT	PAPER NUMBER
2901	38

DATE MAILED: 11/12/96

*Below is a communication from the EXAMINER in charge of this application*

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE PERIOD FOR RESPONSE:

- a)  is extended to run 6 months or continues to run \_\_\_\_\_ from the date of the final rejection *notice of Appeal*  
b)  expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 9/5/96 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1.  The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:
  - a.  There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - b.  They raise new issues that would require further consideration and/or search. (See Note).
  - c.  They raise the issue of new matter. (See Note).
  - d.  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - e.  They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

\_\_\_\_\_

2.  Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3.  Upon the filing an appeal, the proposed amendment  will be entered  will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: single claim

However;

Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4.  The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because Rejection of the claim under 35 USC 103 stands. The rejection of the claim under 35 USC 112, first paragraph stands. See attachment.
5.  The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction  has  has not been approved by the examiner.

Other See attachment

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1. The proposed additional illustration submitted 09/05/96 will be entered upon the filing of the appeal brief, however said amendment introduces new matter (35 U.S.C. § 132, 37 C.F.R. § 1.118). Due to the differences between the original and new drawings, applicant's disclosure fails to comply with the description requirement of 35 U.S.C. § 112, first paragraph. Accordingly, the claim remains FINALLY rejected in that the disclosure does not satisfy the description requirement of 35 U.S.C. § 112, first paragraph. (In re Kaslow, 217 USPQ 1089 and In re Rasmussen, 211 USPQ 323.) The new matter is described as follows:

- a) The smooth portion of the barrel between the threaded end (bulb end) and the knurled barrel is proportionally longer than shown in the original formal and the original mechanical drawings.
- b) In Fig.3, the distance between the outermost concentric circle and the next concentric circle toward the inside is proportionally wider than in the original formal or the original mechanical drawings. Although applicant asserts that this is for consistency with the proportions of the flashlight head to the barrel and to the threaded end (shown in new Figs.1 and 2), the flashlight head in the new drawing is proportionally wider than in the original disclosure.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Tung, whose telephone number is (703)305-3105. The examiner can normally be reached on Tuesday-Friday from 7:30 to 5:00. The examiner can also be reached on alternate Mondays. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hugo Word, can be reached on (703)305-3171. The FAX phone number for this group is (703)308-2742. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-305-3293.

mht  
October 28, 1996

  
M. H. TUNG  
EXAMINER  
ART UNIT 2901